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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
VIE LUXE INTERNATIONAL, LLC and  
MARJORIE GUBELMANN RAEIN  
Plaintiffs,

**Docket # 08 CV 5023 (LAP)**

**AFFIRMATION IN  
SUPPORT OF MOTION**

-against-

DANIEL BENEDICT  
Defendant.


\_\_\_\_\_  
X

DAVID C. HOLLAND, ESQ., an attorney duly admitted to the practice of law before the courts of the State of New York and Southern District of New York, affirms the following under penalties of perjury:

1. I am an attorney in The Law Offices of Michael Kennedy, P.C., counsel for the defendant, Daniel Benedict, and as such, am fully familiar with the facts and circumstances described herein.
2. I make this Affirmation in Support of Defendant's Pre-Answer Motion seeking to dismiss the above captioned action:
  1. pursuant to F.R.C.P. 12(b)(1) for lack of a federal question and subject matter jurisdiction in Plaintiffs' claim under 18 U.S.C. §1030, and ,
  2. F.R.C.P. 12(b)(6) for failure to state a cause of action upon which relief can be granted.

3. Plaintiffs have also filed a multitude of state-based contract and tort claims related to an ongoing employment dispute.
4. The Third Cause of Action in that Complaint is based upon 18 U.S.C. §1030, a federal criminal statute, that contains a private remedy for specific occasions where an employee tampers with or destroys information upon a computer causing damages in excess of \$5000.
5. Plaintiffs have not properly pled essential elements of the claim to confer subject matter jurisdiction upon this Court.
6. Plaintiffs have not properly pled essential facts of the claim and have otherwise failed to state a cause of action upon which relief may be granted.
7. For the reasons stated in the annexed Memorandum of Law, this Court should dismiss the claim under F.R.C.P. 12(b)(1) or F.R.C.P. 12(b)(6).
8. In the event that the Court agrees that federal claim has been properly placed before it, this Court should decline to exercise its discretion and to entertain the remaining state-based contract and tort claims under it's supplementary jurisdiction pursuant to 28 U.S.C. §1367.

Dated: New York, New York  
June 18, 2008



David C. Holland, Esq.  
Attorneys for Defendant